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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

NOTICE OF EX PARTE COMMUNICATION

Marlene H. Dortch, Secretary
Federal Communications Commission
The Portals
445 12th Street, S.W., TW-A325
Washington, DC 20554

Re: Request to Update Default Compensation Rate For Dial-Around Calls from Payphones, WC Docket No. 03-225

Dear Ms. Dortch:

On March 4, 2004, Albert Kramer, Robert Aldrich and the undersigned, on behalf of the American Public Communications Council ("APCC"), met with Jon Stover and Carol Canteen of the Wireline Competition Bureau. The attached document was distributed and discussed at the meeting.

Respectfully submitted,

Robert Felgar

Robert N. Felgar

Enclosure
cc: Jon Stover (w/ encl.)
Carol Canteen (w/ encl.)

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AMERICAN PUBLIC COMMUNICATIONS COUNCIL ("APCC")

Ex Parte Presentation, WC Docket No. 03-225

THE FCC MUST PRESCRIBE A MAJOR INCREASE IN THE DIAL-AROUND COMPENSATION RATE

I. The Appropriate Level of Payphone Deployment

- Payphone deployment has decreased 31 percent since 1998. The decline is accelerating.
- In the *Third Payphone Order*, the FCC found that there was adequate deployment because there was no evidence of concern at the state level. Today, the record shows that the sharp declines in payphone deployment have alarmed state public service commissions, local governments, community organizations, and the general public.
- By increasing the dial-around rate to $.48, the FCC may not be able to prevent further erosion of the payphone base, but can at least slow the rate of decline.
- In arguing that the decline is due to "market forces," the interexchange carriers ("IXCs") ignore that one of these "market forces" is not a "market force" at all, but an artificial cap on dial-around rates. Leaving a below-cost cap in place precludes the payphone market from responding appropriately to market forces.

II. The Remedy

- The payphone market is suffering from widespread market failure. While the coin rate has increased, the compensation rate remains capped at $.24, artificially suppressing payphone service provider ("PSP") revenues and forcing coin callers to pay for a disproportionate share of the joint and common costs.
- State public interest payphone ("PIP") programs are designed to be a backstop, not a substitute for a well functioning market. They cannot remedy market failure on a wide scale – nor can they "ensure that [PSPs] are fairly compensated for each and every . . . call."
- To remedy this situation, the FCC should raise the cap on payphone rates, allowing the market to set the compensation rate subject to a cap that prevents clearly excessive rates.
- Relying on PIP programs without increasing the compensation rate would replace a market-oriented solution – raising the cap on the dial-around rate – with a government-directed, highly regulatory approach. This would violate the Section 276 mandate to promote competition.

III. Elasticity of Demand for Dial-Around Calls

- Whether demand for dial-around calls is elastic is legally irrelevant. PSPs are entitled to cost recovery.
- In any event, the IXCs have utterly failed to show that increasing the dial-around rate will reduce total revenues:
  - The data on coin rate increases is inconclusive and irrelevant.
  - The IXCs confuse the compensation rate with end user rates. According to the IXCs' own data, increasing the compensation rate to $.48 would increase the price of access code calls by only 5%.
  - Subscriber toll-free calls – the majority of dial-around calls – have little if any demand elasticity since they are "toll-free" to the caller.
  - The record supports the common-sense inference that the decline in payphone deployment is caused by the boom in cell phone usage, not by increases in payphone rates.
- There are market-based safeguards against counterproductive rate increases. Reduced revenues would motivate PSPs to accept a lower rate. Moreover, if a dial-around rate increase did deter usage excessively, IXCs could block calls from payphones.

IV. Call Volumes From the Marginal Payphone

- APCC's methodology for determining the call volume from "marginal" payphones closely follows the *Third Payphone Order.*
- The FCC defines a marginal payphone as one that "breaks even" by earning just enough revenue to recover costs plus a reasonable profit. Consequently, the PSP neither pays a commission to nor requires a payment from the location provider.
- APCC calculated the average call volume from a marginal payphone by averaging the call volume from 108 randomly selected payphones that neither paid commissions to nor received payments from location providers. While some of these payphones did not recoup all of their costs, others generated economic profits. On average, the payphones in APCC's cost study provide a valid picture of marginal payphones.
- APCC and the RBOC Coalition, in separate cost studies, estimated approximately the same number of calls from the marginal payphone, thus confirming the reasonableness of each of their results.

V. Cost Categories

A. Collection expenses

- There should be a separate cost element for dial-around collection expenses such as fees paid to dial-around aggregators like APCC Services and litigation expenses incurred to collect compensation from delinquent IXCs.

- Contrary to the IXCs' allegation, APCC's cost study did not include fees paid to dial-around aggregators and litigation expenses. APCC's estimate of $.007 in collection expenses is conservative. Collection costs are likely to increase under the Commission's switch-based reseller order, which requires PSPs to collect compensation from more IXCs than ever before.

B. Bad Debt

- Virtually all businesses factor bad debt into pricing. Bad debt must be reflected in the dial-around rate to ensure fair compensation. No prior cases prohibit the inclusion of bad debt estimates supported by the record.

- The APCC cost study treats bad debt conservatively by including in its call volumes only the calls for which PSPs were paid. APCC also updated its cost study to reflect subsequent collection of compensation payments – reducing the cost-based compensation rate by less than a cent.

- It is premature to conclude that the switch-based reseller order will reduce the amount of bad debt experienced by PSPs. If necessary, the FCC can adjust the compensation rate in the future to reflect proven changes in bad debt.

C. Equipment Costs

- APCC's cost study reflects the price of used equipment that has been fully restored to like-new condition in terms of both appearance and operation.

- Basing equipment costs on used equipment in poor condition, as the IXCs propose, would require PSPs to use inferior equipment.

D. Line Costs

- APCC's cost study used the actual ILEC line rates in effect for each location in APCC's sample of marginal payphones.

- There is no reason to believe that line rates have decreased after the cost study was conducted since the requirement to apply the new services test to line rates had been in effect for five years, and the Common Carrier Bureau guidelines clarifying the new services test for State public service commissions had been available for two years.

E. Caller-Pays Methodology

- A caller-pays system would change completely the nature of toll-free dial-around service. Toll-free calls are by definition free. Moving to a caller-pays system would eliminate toll-free service from payphones.

- Great value is added to payphones by allowing callers to place calls even if they do not have coins. A caller-pays system would eliminate that value.

- The Commission has repeatedly rejected a caller-pays system; nothing has changed to justify a different conclusion here.

VI. Advertising Revenue

- Advertising revenue should not be considered since virtually no marginal payphones generate advertising revenue.

- Advertising revenue is irrelevant since it is an unregulated income source unrelated to per-call costs.